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Ruling Asked in Attack On Legality of HUAC

Justice Department and civil liberties lawyers filed opposing papers in Federal court here yesterday that will spell either quick death or continued life for an unprecedented attack on the constitutionality of the House Un-American Activities Committee.

The Justice Department asked that a special three-judge court convened last week for the challenge be dissolved.

The American Civil Liberties Union contends its action has raised issues substantial enough to require the court to hold a full-dress hearing on its grievances against HUAC.

The court is expected to rule on the dispute soon.

It was established at the ACLU's behest on the eve of a HUAC subcommittee hearing to which several Vietnam war critics had been subpoenaed. ACLU sought a court injunction to bar enforcement of the subpoenas.

District Court Judge Howard F. Corcoran issued a historic but short-lived restraining order Aug. 15 which was rescinded in less than 24 hours by a three-judge panel established on his own order to hear the ACLU challenge.

In the meantime, HUAC withdrew its subpoenas against the anti-Vietnam war witnesses.

Government attorneys contend everything is moot since there are no subpoenas to be enjoined. But more basic, they say, the court cannot enjoin a legislative function because of the separation of powers doctrine and the "sovereign

immunity" of congressmen from interference in the official duties. Courts also may not enjoin the legislature in "anticipation" of possible criminal action against HUAC witnesses for refusing to testify under subpoena, they said.

ACLU lawyers counter that the mere issuance of subpoenas has a "chilling effect" on the First Amendment rights of free speech and association, and there is no necessity "to go to jail" before seeking injunctive relief.